REMARKS / ARGUMENTS

This is meant to be a complete response to the Office Action mailed July 29, 2005. The Applicants appreciate the Examiner's making the rejection non-final. The Office Action dated July 29, 2005 and the above cited patents have been reviewed. In view of the following remarks, it is Applicant's belief that the present patent application is in a condition for allowance.

Applicant's Response to the 35 U.S.C. §103(a) Rejection of Claims 1-38 Over Boyer, Kobylevsky, and Denny

In this Office Action, the Examiner rejected Applicant's claims 1-38 under 35 U.S.C. §103(a) as being unpatentable over Boyer (U.S. Patent 6,202,923), Kobylevsky (U.S. Patent 6,493,427) in view of Denny (6,687,676). In this regard, as understood, it appeared that the Examiner was in agreement that the combination of Boyer and Kobylevsky did not render claims 1-38 unpatentable by themselves due to a variety of differences between the claimed invention and the teachings of Boyer and Kobylevsky. In this regard, such deficiencies were then supplied by the teachings of Denny (6,687,676), i.e., the parent patent application to which

the present patent application is related.

Applicant's attorney does not understand the rejection of claims 1-38 because Denny is not believed to be prior art. That is, a patent or publication must be in the prior art under 35 USC § 102 before it can be used as prior art under 35 U.S.C. §103(a)[1]. The only section which would appear to be applicable would be § 102(e), but this fails because § 102(e) requires (1) an application for patent published under section 122(b) or (2) a patent granted on an application for patent by another filed in the United States. In this case, Denny is not "by another" as recited in § 102(e) and therefore Denny is not prior art under § 102(e). If there is some particular deficiency which Applicant's attorney has overlooked, it would be helpful if the Examiner would note which section of §102 Denny is prior art under.

It is Applicant's belief that a *prima facie* case of obviousness has not been presented because Denny is not believed to be prior art. Applicant respectfully disagrees with the Examiner's comments and rationale in the office action to prevent the Applicant from inadvertently making any admissions. Reconsideration and withdrawal of the rejection of claims 1-38

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[1]"Before answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102." *Panduit Corp. V. Dennison Mfg. Co.,* 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir.), *cert. denied,* 481 U.S. 1052 (1987). Subject matter that is prior art under 35 U.S.C. 102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981) ("it appears to us that the commentator [of 35 U.S.C.A.] and the [congressional] committee viewed section 103 as including all of the various bars to a patent as set forth in section 102."). [MPEP § 2141.01(I)]

in view of the combination of Boyer, Kobylevsky and Denny is respectfully requested.

CONCLUSION

The foregoing is intended to be a complete response to the Office Action dated July 29, 2005. Reconsideration and withdrawal of the objections and rejections is respectfully requested. Should the Examiner have any questions or comments regarding the foregoing, Applicant's attorney would welcome a telephonic interview with the Examiner.

Respectfully submitted,

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